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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1369 OF 2007

Chief Officer,
Karmala Nagar Parishad,
Karmala, Dist. Solapur & anr. ... Petitioners

V/s

Sandeshkumar Shripal Upadhye ... Respondent

Mr. M.S. Kumthekar for the petitioners.

Smt. Shilpa Mangle with M.B. Gawade for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 1ST AUGUST, 2007.

P.C.:

1. The petitioners impugn the order dated 30.9.2006 passed by the Industrial Court on Exh.C-1 and Exh.C-2 in Misc. (ULP) No. 22 of 2004. An ex-parte order was passed by the Industrial Court in Complaint (ULP) No. 121 of 2002 on 29.10.2003. The petitioners had not filed any written statement in that complaint. The Industrial Court, on the basis of an affidavit in lieu of evidence filed by the respondent workman allowed the complaint and held that the petitioners had committed an unfair labour practice under Items 5, 6, 9 & 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. According

to the petitioners, they learnt of the order being passed on 5.2.2004. An application for setting aside the ex-parte order was preferred on 3.8.2004. The petitioners also filed an application for condoning the delay in filing this application. The application was filed under Section 31 (2) of the M.R.T.U. & P.U.L.P. Act.

2. The Industrial Court disposed of the application for condoning the delay by concluding that it has no powers to condone the delay in filing an application under section 31 of the Act beyond the period of 30 days. Aggrieved by this order, the petitioners have approached this Court under Art. 227 of the Constitution of India. It is submitted on behalf of the petitioners that the Industrial Court ought to have condoned the delay in filing the restoration application. The delay, according to the petitioner, was caused because they had no notice of the order passed and the concerned Chief Officer who was in office when the ex-parte order was passed, had been transferred. According to the petitioners that some time elapsed before the petitioners could take a decision to challenge the ex-parte order. In these circumstances, it is submitted that the delay in filing the application for restoration ought to have been condoned.

3. The learned advocate appearing for the petitioners points out the judgment of the learned Single Judge between **Prakash Mishra v/s Central Institute for Cotton Research, reported in 1986 Lab.I.C. 745,** wherein it has been held that the delay in filing an application for restoration should not preclude the Industrial Court in condoning the delay as it has the discretion to do so. The learned Judge has observed in para 11 as follows:-

> "11. At this stage I may point out that the proceedings for setting aside the order of dismissing in default or the ex-parte order are not punitive proceedings. Even in cases where there is no adequate proof of sufficient cause, if the applicant is diligent in prosecuting his case, such orders are set aside subject to costs. The Court should, therefore, not be so strict in depriving the party of his right to litigate his case on technicalities of the procedural law. The learned counsel for the respondent, however, points out to me that the petitioner has preferred a civil suit No. 856 of 1984 in the matter of his dismissal and, therefore, discretion should not be exercised by this Court in setting aside the impugned

> orders. I do not think that the aforesaid plea of the respondent is well founded. If there is no bar to filing a civil suit, I do not think that the petitioner should be precluded in prosecuting both the proceedings."

4. The learned advocate for the respondent workman brings to my notice the judgment of the learned Single Judge (Dabholkar, J.) in the case of **Dilip Vithalrao Jogdand v/s Vaidyanath Urban Co-op. Bank Ltd., reported in 2007 II CLR 78,** wherein it has been held, relying on the decision of the Division Bench at Aurangabad in **L.P.A. No. 3 of 2004,** that the Industrial Court has no power to condone the delay in filing the restoration application.

5. The Division Bench while considering **L.P.A. No. 3 of 2004 in Writ Petition No. 631 of 2003**, has observed thus -

> "We have considered the scheme of section 31 of the M.R.T.U. & P.U.L.P. Act, 1971 and sub-section (2) therein enables an aggrieved party to file an application for restoration within a period of 30 days. There is no power

with the Court concerned to condone the delay on the lines of such a power as has been provided under Section 30 of the Act."

6. In this view of the matter, the restoration application, which has been filed beyond the period of 30 days, cannot be entertained by the Industrial Court and the delay cannot be condoned as the powers of the Industrial Court are circumscribed by the provisions of Section 31 (2) of the Act. The Industrial Court in the present case has justifiably held that it had no power to condone the delay in filing the restoration application and has thus dismissed the application.

7. In the light of the judgment of the Division Bench in the aforesaid L.P.A. No. 3 of 2004, the order passed by the Industrial Court cannot be faulted.

8. Petition rejected.

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